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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 14

Application Number: 09/700,666
Filing Date: November 17, 2000
Appellant(s): ROTKOPF, MENACHEM

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 19 December 2002.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims *** do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

3,903,804	LUTTRELL	9-1975
4,127,243	JACOBSON ET AL.	11-1978

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PCT/US89/02823, SCHRICKER, 01-1990

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-4, 14-18 are rejected under 35 U.S.C. 102(b). This rejection is set forth in prior Office Action, Paper No. 9.

Claims 5-7 are rejected under 35 U.S.C. 103(a). This rejection is set forth in prior Office Action, Paper No. 9.

Claims 9-11 are rejected under 35 U.S.C. 103(a). This rejection is set forth in prior Office Action, Paper No. 9.

(11) *Response to Argument*

With respect to the rejection of claims 1 and 14, applicant argues that Schricker is not anticipatory prior art because the claim 1 requires a projectile "adapted to be shot from a barrel..." while Schricker only discloses a weapon adapted to be launched from a "launch tube". However, an examiner is required to give claims their broadest reasonable interpretation. The terms "barrel" and "launch tube" are synonymous because both are elongated cylindrical cylinders used to "launch" projectiles. The applicant even admits this when he concludes, "One skilled in the art would not confuse the term barrel limiting claims 1 and 14 with a launch tube as described by Schricker." (Emphasis added).

With respect to claims 1 and 14, applicant argues that both claims require a "a first motor for maintaining a cruise velocity..." But, applicant argues, Schricker discloses neither a first motor nor a cruise velocity. However, applicant's specification and appeal

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brief statements contradict applicant's conclusion of patentability over Schricker. For example, applicant's specification states, "A cruise rocket motor includes, but is not limited to a propellant, that when ignited, maintains a cruise velocity of a projectile in flight." (Specification, pg. 6, ll. 10-11). Schricker clearly discloses a "cruise rocket" 24 that meets this limitation on pg. 5, ll. 18-23 and as admitted by the applicant in his appeal brief. Furthermore, applicant's specification discloses, "a cruise velocity includes, but is not limited to, substantially any velocity which maintains the projectile's initial launch flight velocity." Again, Schricker clearly meets applicant's definition of cruise velocity. Schricker discloses that launch motor 24 provides a subsonic speed of "900 ft/sec or 300 m/sec" (pg. 5, ll. 22-23) and that "the weapon will then fly at the *subsonic speed* towards the target." (pg. 5, ll. 24-25). Clearly, the projectile of Schricker is launched at a known subsonic speed and continues at that speed until the booster motor is engaged.

In response to applicant's argument that the references fail to show certain features of applicant's invention (regarding claims 5-7 and 9-11), it is noted that the features upon which applicant relies (i.e., "scatter" or "wind torque") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

For the above reasons, it is believed that the rejections should be sustained.

rocket
motor
inherently
cruises to a
max speed
and maintains
the speed

192(c)
Repetitive
Brief

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Respectfully submitted,

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Examiner
Art Unit 3641

March 21, 2003

Conferees

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